



November 22, 2002

Ms. Allyson Mitchell
Assistant Criminal District Attorney
Anderson County
500 North Church
Palestine, Texas 75801

OR2002-6718

Dear Ms. Mitchell:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 172631.

The Anderson County Sheriff's Department (the "sheriff's department") received a request stating "[p]rovide [the requestor] with a list of all unserved warrants in the sheriff's possession . . . [p]lease include names, address on the warrant, last known address, and efforts made to serve the warrant." You state that the sheriff's department does not have a list of last known addresses and efforts made to serve the warrants.¹ You state that you have redacted information not specifically requested by the requestor. You claim that some of the requested information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the submitted representative sample of information.²

We now consider your assertion that the responsive list includes information subject to section 58.007 of the Family Code. Section 552.101 encompasses confidentiality provisions

¹We note that it is implicit in several provisions of the Public Information Act (the "Act") that the Act applies only to information already in existence. *See* Gov't Code §§ 552.002, .021, .227, .351. The Act does not require a governmental body to prepare new information in response to a request. *See* Attorney General Opinion H-90 (1973); *see also* Open Records Decision Nos. 572 at 1 (1990), 555 at 1-2 (1990), 452 at 2-3 (1986), 416 at 5 (1984), 342 at 3 (1982), 87 (1975). A governmental body must only make a good faith effort to relate a request to information which it holds. *See* Open Records Decision No. 561 at 8 (1990).

²We assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

such as Family Code section 58.007.³ Juvenile law enforcement records relating to conduct that occurred on or after September 1, 1997 are confidential under section 58.007. The relevant language of section 58.007(c) reads as follows:

(c) Except as provided by Subsection (d), law enforcement records and files concerning a child and information stored, by electronic means or otherwise, concerning the child from which a record or file could be generated may not be disclosed to the public and shall be:

- (1) if maintained on paper or microfilm, kept separate from adult files and records;
- (2) if maintained electronically in the same computer system as records or files relating to adults, be accessible under controls that are separate and distinct from controls to access electronic data concerning adults; and
- (3) maintained on a local basis only and not sent to a central state or federal depository, except as provided by Subchapter B.

Here, you have not established, nor does a review of the information you have highlighted make clear, that the highlighted information involves juvenile conduct that occurred after September 1, 1997, or that each of the individuals was a "child" when the offenses were committed. See Fam. Code § 51.02 (definition of "child"). Accordingly, you have failed to establish that the information is confidential pursuant to section 58.007(c) of the Family Code. Therefore, you may not withhold the highlighted information from disclosure under section 552.101 of the Government Code in conjunction with section 58.007.⁴

We now consider your arguments that the submitted addresses are excepted from release pursuant to section 552.101 in conjunction with the right to privacy. Common-law privacy protects information if (1) the information contains highly intimate or embarrassing facts the publication of which would be highly objectionable to a reasonable person, and (2) the information is not of legitimate concern to the public. *Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). The type of information considered intimate and embarrassing by the Texas Supreme Court in *Industrial Foundation* included information relating to sexual assault, pregnancy, mental or

³Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." This section encompasses information protected by other statutes.

⁴ We caution that the distribution of confidential information constitutes a criminal offense. Gov't Code § 552.352.

physical abuse in the workplace, illegitimate children, psychiatric treatment of mental disorders, attempted suicide, and injuries to sexual organs. 540 S.W.2d at 683.

Constitutional privacy consists of two interrelated types of privacy: (1) the right to make certain kinds of decisions independently and (2) an individual's interest in avoiding disclosure of personal matters. Open Records Decision No. 455 at 4 (1987). The first type protects an individual's autonomy within "zones of privacy" which include matters related to marriage, procreation, contraception, family relationships, and child rearing and education. *Id.* The second type of constitutional privacy requires a balancing between the individual's privacy interests and the public's need to know information of public concern. *Id.* The scope of information protected is narrower than that under the common-law doctrine of privacy; the information must concern the "most intimate aspects of human affairs." *Id.* at 5 (citing *Ramie v. City of Hedwig Village, Texas*, 765 F.2d 490 (5th Cir. 1985)).

This office has held that home addresses are not highly intimate information and, therefore, may not be withheld under common-law privacy or constitutional privacy. *See* Open Records Decision Nos. 488 (1988), 455 (1987) (finding that home addresses are not protected under common-law privacy), 169 (1977), 123 (1976) (absent a showing of special circumstances, common-law and constitutional privacy do not protect home addresses and telephone numbers). Accordingly, you may not withhold the submitted addresses under section 552.101. You must release the requested information.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the

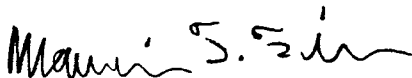
governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Maverick F. Fisher
Assistant Attorney General
Open Records Division

MFF/seg

Ref: ID# 172631

Enc: Submitted documents

c: Mr. Gerald Moore
The Clarion
309 West Oak
Palestine, Texas 75801
(w/o enclosures)